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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)NO.1049 OF 2023

1.Balammal

2.Balachamy

:Appellants/Claimants

.VS.

The United India Insurance Company Limited,
through its Branch Manager,
Door No.24-A, Srikulam Colony,
Sivakasi,
Virudhunagar District.

: Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.93 of 2017, dated 23.11.2022, on the file of the Motor Accidents Claims Tribunal, Sankarankovil.

For Appellants

:Mr.K.P.Sankarakumara

Kuruparan

For Respondent

:Mr.A.S.Mathilalagan

JUDGMENT

Challenge is made to the award passed in M.C.O.P.No.93 of 2017, dated 23.11.2022, on the file of the Motor Accidents Claims Tribunal, Sankarankovil.



2.The appellants/Claimants filed claim petition in M.C.O.P.No.

93 of 2017 claiming compensation of Rs.20 lakhs for the death of their son in a road accident. It is seen from the Petition averments that the deceased Baskaran was an Engineering Graduate and was working in Aqua Sub Company in Coimbatore, earning a sum of Rs.3,000/- p.m. On 25.10.2016, when the second appellant contacted the deceased through phone, he informed him that he would come to the native place during Deepavali holidays. On 26.10.2016 at about 5.30 am., the second appellant received information through phone stating that the deceased while travelling from Madurai to Tirunelveli in a two wheeler bearing Registration No. TN 49 B 4857, fell down and died of injuries suffered. It is the case of the appellants that the accident had happened because of the involvement of some other vehicle which had come from opposite direction. Without proper investigation, the Police registered a case against the deceased. In the said circumstances, the claim petition was filed claiming compensation of Rs.20 lakhs.

3.The respondent filed counter disputing the claim with regard to the manner in which the accident had happened and the very filing of the claim petition under Section 163-A of the Motor Vehicles Act. The deceased Baskaran was a tortfeasor and when he was



responsible for the accident, the claim petition cannot be maintained under Section 163-A of the Motor Vehicles Act. The compensation claimed is also challenged.

4. On considering the oral and documentary evidence produced before the Tribunal in the form of oral evidence of P.W.1 and Ex.P1 to Ex.P15, the Tribunal found that the deceased was the owner of the two wheeler bearing Registration No. TN 49 B 4857 and that by rash and negligent riding of the two wheeler, he was responsible for the accident, he was a tortfeasor and therefore the appellants cannot maintain the claim petition under Section 163-A of the Motor Vehicles Act and ought to have filed claim petition under Section 166 of the Motor Vehicles Act. In this view of the matter, the learned Tribunal dismissed the claim petition.

5. It is the submission of the learned counsel for the appellant that the accident had happened during night time and there is no eyewitness to the accident. In the said circumstances, registering the First Information Report against the rider of the two wheeler stating that the deceased was responsible for the accident was not correct. There is a possibility that somebody might also be responsible for the accident.



6. In contra, it is the submission of the learned counsel for the respondent/Insurance Company that there is no evidence produced by the appellants to show that the accident had happened because of the involvement of a third party vehicle. On the other hand, there is a positive evidence that the deceased himself was responsible for the accident and that was the reason why the First Information Report was registered against the deceased. After investigation, final report was filed stating that the deceased by riding the two wheeler in a rash and negligent manner, lost control and balance and was responsible for the accident and for his death.

7. This Court considered the rival submissions made on either side and perused the records.

8. From the First Information Report and final report filed in this case, it is evident that the accident had happened because of the rash and negligent riding of the two wheeler by the deceased, resulting in his death. Therefore, the criminal case was closed as "action dropped". While the appellants/claimants states that there is a possibility of some other vehicle involvement in the accident, it is the bounden duty of the appellants to produce necessary evidence in support of their claim. Unfortunately, there is no such evidence



produced by the appellants. Therefore, it is not open to the appellants to contend that there is a possibility of some other vehicle involvement in the accident. It is proved from the oral and documentary evidence that the deceased himself was responsible for the accident by rash and negligent riding of the two wheeler.

9.Coming to the maintainability of the claim petition under Section 163-A of the Motor Vehicles Act, the learned Tribunal relying on the judgments in the case of ***Ramkhiladi .vs. The United India Insurance Company reported in 2020 (1) TN MAC 1(SC)*** and the case of the ***Divisional Manager, TATA AIG General Insurance Company Limited .vs. A.C.Jagadeesann and another reported in 2022(1)TN MAC 521***, found that when the owner of the vehicle himself was a tort-feasor ie., the person responsible for the accident, the claim petition cannot be maintained under Section 163-A of the Motor Vehicles Act. Obvious reason is that the principle of "No Fault Liability" implies that the injury or death is the result of the involvement of third party with the claimant being an innocent by stander and the accident had occurred out of no fault of his'.As decided earlier, the deceased himself was responsible for the accident and therefore, on the basis of the ratio of the above judgments, the learned Tribunal rightly



found that the claim petition filed under Section 163-A of the Motor Vehicles Act cannot be maintained and dismissed the claim petition.

This Court does not find any reason to take a different view of the matter and hence, the Civil Miscellaneous Appeal is liable to be dismissed.

10.In the result, the Civil Miscellaneous Appeal is dismissed confirming the judgment and decree made in M.C.O.P.No.93 of 2017, dated 23.11.2022, on the file of the Motor Accidents Claims Tribunal, Sankarankovil. No costs.

07.11.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Motor Accidents Claims Tribunal,
Sankarankovil.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
C.M.A(MD)No.1049 of 2023**

07.11.2023